

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4226 of 2007()

**CRA.25/2007 of VI ADDL.SESIONS COURT, ERNAKULAM
CC.975/2001 of JUDL.MAGISTRATE OF FIRST CLASS, KOLENCHERRY**
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REVN. PETITIONER: 1ST APPELLANT/ACCUSED:

**LAIJU, S/O.SUNDARAN, KARIPPA MOOLAYIL
VEEDU, AIRAPURAM KARA, AIRAPURAM VILLAGE,
ERNAKULAM DISTRICT.**

BY ADV. SRI.S.RAJEEV

RESPONDENTS: RESPONDENT/STATE:

**STATE OF KERALA REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
(CRIME NO. 19 OF 2001 OF KUNNATHUNADU POLICE
STATION)**

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

V. RAMKUMAR, J.
= = = = =
Crl.R.P.No. 4226 of 2007
= = = = =
Dated this the 30th day of November, 2007

ORDER

Heard both sides. The revision petitioner, who was the 1st accused in C.C.No.975 of 2001 on the file of Judicial First Class Magistrate Court, Kolenchery for offences punishable under Sections 323 IPC and 325 IPC read with Sec 34 IPC, challenges the conviction entered and sentence passed against him for an offence punishable under Section 324 IPC.

2. The case of the prosecution can be summarised as follows:

3. At about 8.15 am, on the road situated to the western side of the residential building of the three accused persons, the accused persons out of their previous enmity towards PW1 and in furtherance of their common intention, voluntarily caused grievous hurt to PW1 by 1st accused, beating him with an iron rod on the left shoulder causing a fracture of the left cavicle and A1 beating PW2 on the left leg with the iron rod and when PW 3 and 4 rushed to the scene to the rescue of PW1 and 2, they were also beaten by the accused with bare hands. The accused have

thereby committed offences punishable under Sections 323 and 326 read with 34 IPC.

4. On the accused pleading not guilty before the trial court for the aforementioned offences, the prosecution was permitted to adduce evidence in support of its case. On the side of the prosecution 11 witnesses were examined as PW1 to PW11 and nine documents were marked as Exts.P1 to P9.

5. After the close of the prosecution evidence, all the three accused persons were examined under Section 313(1)(b) Cr.P.C with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence. They did not adduce any defence evidence when called upon to do so.

6. The learned Magistrate after trial, as per judgment dated 13.12.06 found all the three accused persons guilty of offences punishable under Sections 323 and 325 read with 34 IPC. Each of them was sentenced to rigorous imprisonment for a period of one year and a fine of Rs.2,000/- and on default, to rigorous punishment for three months for the offence under Section 325 IPC and fine of Rs.1,000/- and on default, to simple imprisonment for one month for the offence under Section 323 IPC.

7. Aggrieved by the said conviction entered and sentence passed by the trial court, the three accused persons preferred an appeal before the Sessions Court, Ernakulam as Crl.A.No.25/2007. The learned VI Additional Sessions Judge as per judgment dated 29.9.07 acquitted accused Nos.2 and 3 but confirmed the conviction entered and sentence passed against the 1st accused. Hence this revision.

8. Even though the learned counsel appearing for the revision petitioner assailed the conviction recorded against the revision petitioner on various grounds, in as much as the conviction has been entered by the courts below after a careful evaluation of the oral and documentary evidence in the case, this Court sitting in revision will be loath to interfere with the said conviction entered against the revision petitioner. The conviction is accordingly confirmed.

9. What now survives for consideration is the question regarding the adequacy or otherwise of the sentence imposed on the revision petitioner. Admittedly, the occurrence took place on the road which was the subject matter of the dispute between the parties, There was also a counter case registered by the very same Police at the instance of the revision petitioner. It was the

existing civil disputes between the parties with regard to the road in question which resulted in the occurrence. Having regard to the facts and circumstances of the case, I do not think the revision petitioner deserves penal servitude by way of incarceration for his conviction under Section 325 IPC. I am of view that a sentence of imprisonment till the rising of Court and an appropriate compensation shall meet the interest of justice. Accordingly, the sentence imposed on the revision petitioner under Section 325 IPC is set aside and instead, he is directed to suffer imprisonment till the rising of the court and to pay a sum of Rs.9,000/-(Rupees nine thousand only) as compensation to PW1 under Section 357(3) Cr.P.C. If the compensation is not paid within 45 days from today, the revision petitioner shall suffer simple imprisonment for one month by way of default sentence. The conviction and sentence under Section 323 Cr.P.C is not interfered with.

In the result, this revision petition is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE

sj